LB 1012- PACE
Property Assessed Clean Energy

104^{th} Legislature, 2^{nd} Session

Introduced: Senator Heath Mello
Prioritized: Senator Ken Haar

Background & Legislative History:

In 2010, Senator Mello introduced LB 1098, which would have authorized PACE financing through the creation of sustainable energy financing districts. LB 1012 is similar in nature to LB 1098, but contains a number of new and differing provisions.

As of fall 2015 32 states had authorized some form of PACE financing – 20 have authorized only commercial PACE, one has authorized only residential PACE, and 11 have authorized both commercial and residential PACE.

PACE is a fairly new financing tool – the first PACE programs were established in 2008, and a flurry of states authorized PACE in 2009 and 2010 with an emphasis on residential PACE programs. In July 2010, most residential PACE programs were put on hold when the Federal Housing Finance Agency (FHFA) advised that residential PACE liens threatened the first mortgages on PACE properties, since at the time residential PACE liens had first priority. Following the FHFA directive, most state PACE programs focused exclusively on commercial PACE projects.

On August 24, 2015, the Federal Housing Administration (FHA) announced that they would be releasing guidance that would address FHFA concerns and "reactivate" residential PACE programs. These guidelines, which are expected to be released soon, will require that PACE programs must preserve lien priority for first mortgages, PACE financing must not exceed FHA's maximum combined loan-to-value ratio, and PACE liens must be formally recorded and identifiable to a mortgage lender through a title search. LB 1012 was drafted to comply with these guidelines.

LB 1012- Summary

LB 1012 adopted the Property Assessed Clean Energy (PACE) Act. PACE is a financing mechanism that allows local governments, state governments, or other inter-jurisdictional authorities to finance the up-front costs of energy efficiency and renewable energy improvements on commercial and residential properties. The financing costs are typically repaid by property owners through their property tax bill, and a lien is placed on the property until the assessment is paid off.

Under LB 1012, municipalities would be authorized to create clean energy assessment districts, which are similar in nature to assessment districts for streets, sewers, and other forms of municipal infrastructure. Owners of qualifying property within the boundaries of the district could apply to participate in the PACE program, and would enter into a contract with the municipality spelling out the details of the financing arrangement.

An assessment under the PACE Act, including any interest and penalties, constitutes a lien against the qualifying property until the assessment is paid in full. PACE liens run with the qualifying property, but are subordinate to all prior recorded liens on the qualifying property as well as any first mortgage or trust deed on the qualifying property recorded after the PACE lien.

Municipalities could finance their PACE programs through the issuance of bonds, by setting aside a pool of existing municipal funds, or through third-party lending.

LB 1012 – Nebraska Revised Statute §18-3201 through §18-3211

§18-3201 creates the Property Assessed Clean Energy Act (the Act).

§18-3202 contains legislative findings for the Act.

§18-3203 creates defined terms for the Act, including "energy efficiency improvement", "energy efficiency related item", and "renewable energy resource".

§18-3204 provides for the creation of clean energy assessment districts by a municipality. Prior to creating the district, the municipality must hold a public hearing, and the ordinance creating the district must meet various statutory requirements.

§18-3205 provides requirements for the assessment contract between the municipality and qualifying property owners within a clean energy assessment district. Before entering into an assessment contract, the municipality must obtain verifications from property owners regarding the status of the property and the ability to pay the assessments. Copies of the assessment contract must be filed with the county assessor and register of deeds in the county where the property is located.

§18-3206 provides that an assessment under the Act constitutes a lien against the qualifying property, provides requirements for the recording of PACE liens, and provides for the priority of PACE liens. Upon transfer of ownership of the qualifying property, the obligation to pay annual assessments runs with the qualifying property.

§18-3207 provides that a municipality may raise capital to finance their PACE programs through the issuance of revenue bonds, by setting aside a pool of existing municipal funds, or through third-party lending. Voter approval is required to issue a bond exceeding $5 million or to finance a PACE project on qualifying property owned by the municipality or any other political subdivision.

§18-3208 requires that a municipality that has created a clean energy assessment district must create a loss reserve fund, which can be used to pay delinquent annual assessments in the event of a foreclosure sale on property subject to a residential PACE lien in certain cases. The loss reserve fund cannot be funded through the municipality's general fund.

§18-3209 authorizes a municipality that has created a clean energy assessment district to create a debt service reserve fund to be used as security for capital raised under §18-3207.

§18-3210 allows two or more municipalities to enter into an agreement under the Interlocal Cooperation Act for the joint creation or administration of clean energy assessment districts, and allows a municipality or municipalities to contract with a third party for the administration of clean energy assessment districts.

§18-3211 provides that a municipality that creates a clean energy assessment district shall submit an annual report to the Urban Affairs Committee on or before January 31st of each year.

How PACE Works-

- **Step 1: Framework**
  States pass enabling legislation that allows local governments to create PACE districts via local ordinance and offer PACE financing to building owners. Setting up a PACE district is completely voluntary.
- **Step 2: Project**
  Following the creation of a Clean Energy Assessment District by a municipality, qualified PACE service providers help building owners select cost effective projects that make good business sense. PACE is 100% opt-in by the property owner.
- **Step 3: Financing**
  PACE programs process applications, qualify projects and provide or arrange financing. An assessment or charge is added as an assessment to the property's annual property taxes once the funds are disbursed.

Residential PACE and Commercial PACE

Residential PACE

Homeowners are using PACE to make energy efficient upgrades to their home including heating and air conditioning systems, new windows, and improved insulation and weather sealing. PACE in an effective financing tool because it:

- Covers 100% of a home upgrade project
- Results in savings from day one
- Stays with the property upon sale
- Helps lower electric, gas and water utility bills
- Results in more comfortable buildings and improved indoor air quality
- Lowers carbon footprint and improves the environment

Commercial PACE

Momentum is building across the U.S. for commercial PACE programs that drive energy efficiency, renewable energy, and in some places, water conservation measures. Commercial property owners choose PACE financing because it:

- Covers 100% up front financing, including project development costs
- Provides long-term funding and results in immediate benefit to cash flow
- Stays with the building upon sale
- Solves split incentives by passing payments to tenants
- Increases building value and marketability
- Offers a range of accounting treatments.

Questions and Answers About PACE

Q: How does a community establish a PACE program?
A: A municipality may create a PACE program by passing an ordinance.

Q: Can a county or other political subdivision authorize a PACE program?
A: No. The legislation only authorizes municipalities at this time.

Q: Can several communities work together to create a PACE program?
A: Yes. The legislation authorizes inter-local agreements. It may be preferable for several communities to work together to obtain the best economies of scale for financing.

Q: What is required by the municipal ordinance?
A: The legislation sets out specific requirements, including provisions for the form of the contract and verification that the installation or improvement was correctly installed and is operating correctly.

Q: Has PACE been used effectively in other states?
A: Yes. 32 states have passed some form of PACE legislation. California has the most experience, with more than $1.5 billion in projects that have been authorized to date.

Q: After the municipality passes its ordinance, how does a PACE program get carried out?
A: There is no set formula. They can create a program using their own resources and staff, or they can contract with third party vendors that run PACE programs. The latter may be preferable in terms of ease of operation.

Q: Why use PACE instead of other energy financing options, such as a loan from the Nebraska Energy Office or a bank loan?
A: There are several advantages to PACE. 1. It is often quicker and easier to use, with financing, contracting and payment arranged at the same time. 2. Since it is paid through the property tax process, consumers don't have to make separate payment arrangements. 3. Payments can be extended over a longer period of time than a conventional consumer loan.

Q: How is the PACE financing paid off?
A: It is paid as an assessment on the property through the property tax system.

Q: If a municipality chooses to use bonds to finance a PACE program, are the taxpayers on the hook for the bonds?
A: No, municipalities can only issue revenue bonds which will be paid off by those who participate in the PACE program.

Q: Can a nonprofit, like a church or a charity, participate in a PACE program?
A: Yes. Tax-exempt properties are still subject to assessments such as the type that would be used in a PACE program.

Q: What kinds of improvements can be financed by PACE?
A: Almost any kind of energy efficiency or renewable energy improvement can be financed by a PACE program. This includes insulation, windows, heating and cooling systems, lighting improvements and solar installations.

Q: Can a PACE program be used to provide improvements to new construction?
A: Yes. However, it will likely be used mostly for retrofits to existing structures.

Q: Can local contractors get hired to do PACE funded projects?
A: Yes. However, since there are several verifications required by the legislation, it is expected that contractors will need to meet exacting standards in order to qualify.

Q: What are some of the requirements for a PACE funded project?
A. For example, there is a requirement that the energy project create a savings that is equal to or greater than the cost of the project.

Q: What happens when the property is sold?
A: It depends. The assessment may be paid off at the time of the sale. The legislation also allows the assessment to stay with the property.

Q: Are there other advantages of PACE?
A: Yes. PACE financed projects allow longer-term repayment which can increase short term cash flow for consumers. The fact that larger amounts can be financed allows consumers to install higher cost and more efficient equipment which can also provide better revenue for contractors.